CLERK'S COPY 18569

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 440 155.

W. P. SMITH, PLAINTIFF IN ERROR,

vs.

THE ST. LOUIS AND SOUTHWESTERN RAILWAY COMPANY OF TEXAS.

IN ERROR TO THE COURT OF CIVIL APPEALS OF THE SECOND SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

FILED NOVEMBER 14, 1899.

(17,563.)

(17,563.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 449.

W. P. SMITH, PLAINTIFF IN ERROR,

vs.

THE ST. LOUIS AND SOUTHWESTERN RAILWAY COMPANY OF TEXAS.

IN ERROR TO THE COURT OF CIVIL APPEALS OF THE SECOND SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

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1 *Record from District Court.*

Caption.

THE STATE OF TEXAS, }
County of Tarrant. }

At a term of the district court (48th district), begun and holden within and for the county of Tarrant, at Fort Worth, on the 11th day of October, A. D. 1897, and which term of court adjourned on the 12th day of February, A. D. 1898, before the Honorable Irby Dunklin, judge thereof, the following cause came on for trial, to wit:

W. P. SMITH
vs.
ST. LOUIS — SOUTHWESTERN R'Y CO. OF TEXAS. } 14191.

Plaintiff's First Amended Petition.

Filed March 19, 1898.

W. P. SMITH
vs.
ST. LOUIS & SOUTHWESTERN R'Y CO. OF TEXAS. } Suit Pending in the District Court of Tarrant County, Texas.

To the honorable district court of Tarrant county, Texas:

W. P. Smith, hereinafter styled plaintiff, complaining of the St. Louis & Southwestern Railway Company of Texas, hereinafter styled defendant, leave of the court first had and obtained, files this his first amended original petition in lieu of his original petition filed herein September 30th, 1897, and with respect represents:

That the plaintiff is a resident citizen of Tarrant county, Texas, and that the defendant is a corporation duly incorporated, with an office and local agent, to wit, John Lehane, in Tarrant county, Texas, and that said defendant is a common carrier for hire,

2 and was at the times of matters and things hereinafter complained of engaged in the business of receiving and transporting freight and passengers, with a part of its line of railroad extending into Tarrant county, Texas.

And for cause of action herein plaintiff says that heretofore, to wit, on the 27th day of August, 1897, the St. Louis — Southwestern Railway Company, also a common carrier for hire, agreed and undertook to carry and transport, for a valuable consideration, to wit, the sum of fifty dollars, certain 46 head of cattle, hereinafter described, from the town of Plain Dealing, Louisiana, to Fort Worth, Tarrant county, Texas, and executed and delivered its original bill of lading in writing, binding and obligating itself to transport said cattle as aforesaid, and that defendant, The St. Louis & Southwestern Railway Company of Texas, accepted said cattle from said St. Louis & Southwestern Railway Co., under said bill of lading, from

Texarkana, Texas, and thereby agreed to transport and deliver the said cattle to the point of destination, namely, Fort Worth, Texas, to the owners thereof, said defendant's railroad being a line of railroad connecting with said St. Louis & Southwestern Railway Company's railroad at said Texarkana, Texas, and the same was a continuous shipment from Plain Dealing, Louisiana, to Fort Worth, Texas, the point of destination; that R. F. Miller, of Tarrant county, Texas, was the shipper or consignor in said bill of lading, and that said 46 head of cattle were consigned to this plaintiff, to whom the said defendant agreed to deliver said cattle at Fort Worth, Texas; that at all the times complained of said 46 head of cattle were owned in severalty by the following-named parties, the said cattle described and the owners thereof named as follows: J. S. Collier, of Tarrant county, Texas, at the time of the shipment of said cattle and at the time of their arrival at the place of destination, owned and possessed five cows, two cows and calves, two 2-year-old heifers, one two-year-old steer, 2 one-year-old steers, one two-year-old
3 bull, one four-year-old bull; that at the time of the shipment and of the arrival at destination at Fort Worth, Texas, W. P. Smith owned and possessed of said 46 head of cattle two cows, one cow and calf, two 2-year-old steers, one 3-year-old bull.

That J. A. J. Reeves, of Tarrant county, Texas, owned and possessed of said 46 head of cattle, at the time of said shipment and their arrival at destination at Fort Worth, Texas, three one-year-old steers, three cows, two cows with calves, one 1-year-old heifer, one 1-year-old steer, and one two-year-old steer.

That S. P. Clark, of Tarrant county, Texas, owned and possessed of said 46 head of cattle, at the said time of shipment and arrival at destination, two 3-year-old steers.

That H. P. Miller, of Tarrant county, Texas, owned and possessed of said 46 head of cattle, at the time of shipment and arrival at destination, one cow and calf, one 1-year-old steer, and one 2-year-old steer.

That W. A. Maddox, of Tarrant county, Texas, owned and possessed of said 46 head of cattle, at the time of shipment and arrival at destination at Fort Worth, Texas, two cows, one 1-year-old steer, one 2-year-old steer.

That said R. F. Miller was acting for himself and as the agent of the other co-owners of said cattle in the shipment of same to the said W. P. Smith, who, as consignee, was acting in said capacity for himself as well as the other owners of said 46 head of cattle.

That on or about the 29th day of August, 1897, said 46 head of cattle arrived at Fort Worth, Tarrant county, Texas, and were placed by the defendant railway company in its stock pens at said point, and that at said time the owners of said cattle, on being notified of the arrival of same and while the same were in defendant's stock pens, demanded from said defendant the delivery of said cattle by said railway company, said demand being made by S. P.
4 Clark, of Tarrant county, Texas, acting for himself and for the other owners of said cattle.

That at the time said demand was made the said Clark offered to

pay the freight charges, to wit, the sum of fifty dollars, due for the transportation of said cattle, to the said defendant railway company, and the said tender of said charges was refused by said defendant, said tender having been made to John F. Lehane, the local freight agent of defendant at Fort Worth, Texas, and defendant refused to deliver said cattle to the owners thereof, and ever since have refused to deliver the same to the owners or this plaintiff, whereby said cattle became wholly lost to said owners thereof; that the refusal of the acceptance of said tender and the delivery of said cattle was on or about the 29th day of August, 1897; that said 46 head of cattle were the same which were valued by James D. Farmer, of Fort Worth, Texas, at the stock pens of said defendant railway company in Fort Worth, Texas, at or about the time of said refusal of said tender of the freight charges and delivery of said cattle.

That after the failure and refusal of the defendant railway company to deliver said cattle, as aforesaid, and before the filing of this suit, S. P. Clark, J. A. J. Reeves, J. S. Collier, and H. F. Miller (the latter acting by and through his agent, S. P. Clark), and W. A. Maddox, for a valuable consideration, transferred, set over, and assigned to W. P. Smith, the plaintiff herein, all of their right, title, and interest in the cause of action arising out of the failure of said railway company to deliver said cattle, and granted, bargained, and sold to the said plaintiff herein all of their right, title, and interest in said 46 head of cattle, the same described as the 46 head of cattle valued by Jas. D. Farmer at the stock pens of the St. Louis & Southwestern Railway Company at Fort Worth the — day of ——, 1897; that the assignment of said interest in said cause of action and of said cattle to this plaintiff is in writing.

5 That on account of the failure and refusal of said defendant railway company to deliver said cattle, as aforesaid, the owners thereof were damaged in the sum of seven hundred dollars, for that said cattle at the time of said refusal, at the point of destination, to wit, Fort Worth, Tarrant county, Texas, were of the reasonable fair market value of $700, and that on account of the loss of said cattle and the refusal as aforesaid this plaintiff, who is now the owner of said cattle *and* this cause of action, as hereinbefore shown, has been damaged in the sum of $700, for which he sues.

Wherefore, premises considered, plaintiff prays as in his original petition for judgment for his damages, legal interest, and costs of suit, and for such other and further relief, equitable or legal, special or general, as he may be entitled to.

HENDRICKS & HENDRICKS,
Attorneys for Plaintiff.

Filed March 19, 1898.

R. H. McNATT,
District Clerk.

Defendant's First Amended Answer.

Filed March 21, 1898.

In the District Court, Tarrant County, Texas, 48th Judicial District.

W. P. SMITH
vs. } 14191.
ST. LOUIS & SOUTHWESTERN R'Y CO. OF TEXAS.

Now comes defendant and, by leave, amends its original answer filed herein February 9th, and for amendment says:

Defendant excepts to plaintiff's petition and says it is insufficient to entitle him to recover, and of this it prays judgment.

For answer defendant denies all and singular the allegations in said petition and demands proof, and of this puts itself upon the country.

6 Further answering, defendant says that if plaintiff ever made any contract, as claimed in his petition, then he and his assignors made such contract knowing that it was in violation of law.

That at the time and long before said pretended contract was entered into it was a violation of the laws of the State of Texas to transport or bring Louisiana cattle into the State of Texas; that the cattle involved in this controversy were Louisiana cattle, and were delivered to a connecting line of defendant at Plain Dealing, Louisiana, on August 27, 1897, and the transportation thereof demanded by plaintiff and his assignors.

That therefore, to wit, on June 7, 1897, the Live Stock Sanitary Commission of Texas, acting within the scope of its authority, made, among others, the following order relative to bringing into Texas any cattle from the State of Louisiana, to wit: "From this time forth until the 15th day of November, 1897, no cattle, mules, or horses are to be transported or driven into the State of Texas from the State of Louisiana. The Live Stock Sanitary Commission of the State of Texas hereby order that any violation of the aforesaid rules and regulations by moving any cattle, mules, or horses * * * out of Louisiana into the State of Texas is contrary to said rules and regulations, and shall be an offense and punishable as provided by the laws of the State of Texas."

That immediately thereafter and on the same date the governor of Texas duly published and promulgated according to law the said rules and regulations of said commission, and declared that the quarantine line, rules, and regulations, as in said orders were set forth and recited, should be in full force and effect from and after the date last aforesaid.

That plaintiff and his assignors, with due notice and knowledge of said quarantine regulations existing against the importa-
7 tion of Louisiana cattle into Texas, offered for shipment and demanded the transportation of said cattle into this State,

and defendant and its connecting line which accepted said shipment were both without notice and were ignorant of said quarantine regulations at the time of accepting and transporting the said cattle; that the said pretended contract was and is illegal and void, and therefore cannot form the basis of this action. Further answering, defendant says it received said cattle involved in this controversy at Texarkana, Texas, from the carrier which brought them to that station from Plain Dealing, Louisiana, as it was compelled under the law to do when freight of any character is tendered to it in apparent good order; that defendant and its connecting carrier received and transported said cattle without notice or knowledge of the quarantine regulations which were then in force against the transportation into Texas of Louisiana cattle, but that plaintiff and his assignors had notice and knowledge of said quarantine at and before the time of shipping said cattle; that after the arrival of said cattle at their destination, when defendant for the first time learned of the existence of the quarantine regulation aforesaid, it immediately made application to the Live Stock Sanitary Commission of Texas, asking its permission and consent to defendant's delivery of the cattle to plaintiff, which consent was promptly refused, and said cattle were ordered by said commission to be taken by the defendant out of the State, and defendant was compelled by law to return said cattle to the station and to the carrier from which it received them, and which it promptly did in obedience to the law aforesaid, and its connecting carrier returned said cattle to Plain Dealing, Louisiana, at which point the shipment originated, and there tendered them to plaintiff and his assignors, and they then and there refused to receive them or have anything to do with them.

That, having knowledge of such quarantine regulations at and before the shipment by him and his assignors of said cattle,
8 the said plaintiff and his assignors assumed all risk and expense of having said cattle returned to them at the point of origin and of having their stay in Texas forbidden by the proper and legally constituted authorities of the law, as it was done in this case, and plaintiff and his assignors thereby contributed to and brought upon themselves whatever, if any, damages they have sustained, which defendant says is none; but if it be held that defendant had the like character of notice with plaintiff as to said quarantine regulations, then defendant says plaintiff was alike guilty of negligence contributing to any damages arising from this shipment, and is therefore *nore* entitled to recover.

Further answering, defendant says that by the terms of the contract under which it transported said cattle it was to become liable for no other damage that might be occasioned to said shipment than such as occurred while in its possession, and it is further stipulated and agreed in said contract that in case of total loss of any live stock covered by said contract from any cause for which defendant would be liable payment should be made therefor on the basis of the actual cash value thereof at the time and place of shipment, which in this case was at Plain Dealing, Louisiana. Defendant says it is not liable to plaintiff in any sum whatever, and

that no damage occurred to said cattle while in its possession, but if liable for any amount under said contract, it is only liable for the market value of said cattle at Plain Dealing, Louisiana, which did not exceed the sum of $250.00.

Further answering, defendant says that if it is liable to plaintiff for any sum the same should be credited with the freight due defendant on said shipment and let same equal *to* the sum of $50, pleaded as a set-off against plaintiff; also all expense for feeding and taking care of said cattle, which aggregates the sum of $91.00, and is likewise pleaded as a set-off against plaintiff's recovery.

9 PERKINS, GILBERT & PERKINS AND
P. P. MASON, *Attorneys for Defendant.*

Filed March 21st, 1898.

R. H. McNATT,
District Clerk.

Plaintiff's Supplemental Petition.

Filed Ap'l 5, 1898.

W. P. SMITH
vs.
ST. L. & S. W. R'Y CO. } Suit Pending in the 48th Judicial District of Texas.

Now comes the plaintiff and, with leave of the court, files this his first supplemental petition, and by way of replication to defendant's first amended original answer, filed herein March 21st, 1898, says:

1st. Plaintiff excepts to defendant's special answer and plea setting up that the alleged shipment of the cattle described in plaintiff's petition was in violation of the laws of Texas and of the order of the Live Stock Sanitary Commission of Texas and the proclamation of the governor of Texas made in pursuance thereof, and says that the same is insufficient in law for the reason that said order of said sanitary commission and said proclamation, if made, was void and in violation of section 8 of article 1 of the Constitution of the United States, and an attempt to regulate and impose restrictions upon commerce between the State of Louisiana and the State of Texas, for said special plea and answer shows upon its face that the shipment of said cattle was a continuous shipment from Plain Dealing, State of Louisiana, in and to the State of Texas, and fails to show that the cattle in controversy were afflicted with the disease of charbon or anthrax, as named in said order of said commission: and of this he prays the judgment of the court.

10 2nd. For further exception plaintiff objects to defendant's special plea setting up that the contract of shipment stipulated that "*that* the measure of damages should be made therefor on the basis of actual cash value thereof at the time and place of shipment, which was at Plain Dealing, La.," and says that said plea is insufficient in this, that the same shows to be, if true, contrary to public policy of this State and its laws, and is therefore not binding upon plaintiff, but void; and of this he prays the judgment of the court.

3rd. Plaintiff further excepts to that portion of defendant's said answer setting up that the measure of damages is the market value of said cattle at Plain Dealing, La., under the facts of this case and as a matter of law, but fails to state such facts as would show that said measure of damages is the value of cattle at said place of shipment: and of this he prays the judgment of the court.

HENDRICKS & HENDRICKS,
Att'ys for Defendant, *W. P. Smith.*

For further answer to defendant's special pleas, plaintiff denies all and singular the allegations in each of the same contained, and demands strict proof of the same; and of this he puts himself upon the count-y.

HENDRICKS & HENDRICKS,
Att'ys for Plaintiff, W. P. Smith.

For special plea and replying to so much of defendant's answer as seeks to justify defendant's conduct in refusing to deliver the cattle, the value of which is sued for herein, by setting up and claiming said shipment was in violation of the quarantine regulations of the State of Texas and of the order of quarantine commission of said State and the proclamation of the governor of Texas putting said order in force, plaintiff says that said order and said proclamation fails to state and show that all the cattle in the State of Louisiana are afflicted with the diseases named in said proclamation, and plaintiff says that in truth and in fact the said cattle
11 involved in this suit were not afflicted with said diseases of charbon or anthrax, but were in all respects *were* sound and healthy, and were in no sense capable or liable to communicate said diseases of charbon or anthrax to other cattle, and that said order of said quarantine commission and said proclamation *were* for these reasons could not and did not apply to the shipment of said cattle, and to so construe said order and said proclamation would be a restriction and a burden on the commerce between the State of Louisiana and the State of Texas, and in violation of section 8, article 1, of the Constitution of the United States; and of this he prays the judgment of the court.

HENDRICKS & HENDRICKS,
Attorneys for Plaintiff.

Filed April 5th, 1898.

R. H. McNATT,
District Clerk.

Judgment, April 14, 1898.

W. P. SMITH
vs.
ST. LOUIS & SOUTHWESTERN R'Y CO. OF TEXAS. } 14191.

Judgment, April 14th, 1898.

The above numbered and entitled cause coming on this day to be heard before the court without a jury, and after the *instruction* of

the evidence and the argument of counsel on the facts and the law, the court is of the opinion that the law is for the plaintiff, and that said plaintiff ought to recover by reason of the premises; and it appearing to the court that the plaintiff, W. P. Smith, has been damaged in the sum of $578.10 by the defendant in the manner alleged in plaintiff's petition, it is therefore ordered, adjudged, and decreed by the court that the plaintiff, W. P. Smith, do have and recover of and from the defendant, Saint Louis — Southwestern
12 Railway Company of Texas (a corporation), the said sum of five hundred seventy-eight & $\frac{10}{100}$ dollars, with interest thereon from this date at the rate of six per cent. per annum, for all of which let execution issue.

Conclusions of Fact and Law.

Filed April 14, 1898.

W. P. SMITH
vs.
ST. LOUIS & SOUTHWESTERN RAILWAY Company of Tex.
} Suit Pending in the District Court of Tarrant County, Texas.

Conclusions of fact and law found by the court in the above numbered and entitled cause.

Findings of Fact.

First. I find that the shipment of the cattle in controversy was upon a through bill of lading issued by the St. Louis Southwestern R'y Co., and that Plain Dealing, Louisiana, was the initial point of shipment and Fort Worth, Tarrant county, Texas, the point of destination.

2nd. The defendant, The St. Louis Southwestern Railway Company of Texas, connected with the former-named railroad at Texarkana, Texas, and the cattle were delivered to defendant at Texarkana by the connecting line, and the same was a through and continuous shipment from said Plain Dealing, Louisiana, to place of destination.

3rd. The bill of lading was executed on the 27th day of August, 1897, and the cattle reached Fort Worth on the evening of the 28th of said month, and upon their arrival the owners of the cattle were ready to receive the same, and said owners at Fort Worth, Texas, tendered the amount of freight, to wit, fifty dollars, to the defendant railway company and demanded the cattle, and said tender of freight charges and the demand for the delivery of said cattle at Fort Worth, Texas, were refused by defendant.

13 4th. The cattle remained in the pens of defendant until August 31st, 1897, and the stock yards at Fort Worth refused to receive said cattle in their pens on account of the proclamation of the governor of Texas quarantining Louisiana cattle, and defendant also made application to the Live Stock Sanitary Commission of Texas for permission to deliver said cattle to the owners

thereof, and on account of the governor's proclamation against Louisiana cattle the same was refused, and thereafter the defendant shipped said cattle back to Texarkana, Texas, and there delivered them to the line of railway from which defendant received them, which line returned said cattle to Plain Dealing, La., there tendered said cattle to the shippers, who refused to receive them, and said connecting line, after properly advertising them at the place from which they were received, sold said cattle and tendered $299.20, the proceeds thereof, less pasturage charges at Plain Dealing, La., to the owners of said cattle, which was also refused.

5th. At the time said cattle were received at Plain Dealing, La., and at the time of their arrival at Fort Worth, and of the tender of freight charges made to defendant by the owners of said cattle, the Live Stock Sanitary Commission had recommended the adoption of the following regulation with reference to Louisiana cattle: "The Texas Live Stock Commission has reason to believe that charbon or anthrax has or is liable to break out in the State of Louisiana. From this time forth until the 15th day of November, 1897, no cattle, mules, or horses are to be transported or driven into the State of Texas from the State of Louisiana;" and C. A. Culberson, governor of Texas, on the 5th day of June, 1897, in conformity with law, regularly promulgated said order and regulations of said commission by proclamation, a full copy of which is hereto attached and made a part hereof, and the quarantine thereby established against all cattle in Louisiana was in full force at the time of the shipment in question, if the same was a valid quarantine regulation.

14 6th. The bill of lading under which said cattle were shipped contained the following stipulation: "That in case of total loss of any of the live stock covered by this contract from any cause for which the first party will be liable, payment thereof will be made on the basis of the actual cash value at the time and place of shipment, but in no case to exceed $100 for each horse, pony, gelding, mare or stallion, mule or jack, $50 for each ox, bull or steer, $30 for each cow, $10 for each calf or hog, $3 for each sheep or goat, and in case of injury or partial loss the amount of damages claimed shall not exceed the same proportion." The contract for the shipment of the said cattle was in writing and was signed by the carrier, and also by R. F. Miller, shipper, who acted for himself and as agent for the other owners of the cattle shipped, and, among other things, said contract contains the following agreement: "That for the consideration and for the mutual covenants and conditions herein contained, the said first party" (meaning the initial carrier) "will transport for the said second party the live stock described below and the parties in charge thereof as hereinafter provided, viz: one car said to contain forty-six head of stock cattle from Plain Dealing, La., station to Fort Worth station, consigned to W. P. Smith, at the rate of fifty dollars per car from Plain Dealing, La., to Fort Worth, Texas, subject to minimum weights and length of car specified and provided for in tariff; said rate being less than the rate charges for shipment transported at carrier's risk, for which

reduced rate and other considerations it is mutually agreed between the parties hereto as follows:

First. It is mutually agreed * * * if the destination of such cars be beyond the line of the initial carrier, then said initial carrier agrees and it and each connecting carrier in turn is hereby authorized to deliver said cars to its connecting carrier for transportation under the terms, stipulations, limitations and agree-
15 ments herein contained, and each and every carrier receiving said cars for transportation shall be deemed to adopt the terms and conditions hereof, and assume the like liabilities, and shall be entitled to all the provisions, exemptions from and limitations of liability and other stipulations governing the measure and adjustment of damages herein contained."

I further find that said cattle were traded for in exchange for horses and mules, no money being paid for same, and were shipped after the promulgation establishing the quarantine regulation above mentioned.

Seventh. All the interests of the shippers and owners of said cattle and the proceeds thereof and all the claims arising out of the transactions involved in this suit had been transferred before suit by the respective owners of said cattle, to wit, S. P. Clark, W. A. Maddox, H. P. Miller, J. S. Collier, and J. A. J. Reeves, to the plaintiff herein, and he is now the owner of all the claims arising therefrom, and said cattle were Louisiana cattle, traded for in and around Plain Dealing, La., and at the time they were received by defendant at Texarkana defendant had no actual notice of the orders of the live stock commission and the governor's proclamation, but the owners of said cattle did have actual knowledge of the promulgation of the above-mentioned proclamation of the governor.

8th. It is agreed in this case, by written agreement on file, that there were 46 head of cattle comprehended within this shipment, of age and character as follows: 18 cows, six of which had calves following them; seven one-year-old steers, three heifers two years old each, six two-year-old steers, one heifer one year old, one bull two years old, one bull three years old and one four years old, and two three-year-old steers; and I further find that the actual fair market value of said cattle at the time of their arrival in Fort Worth and the refusal of the tender of freight charges in
16 the Fort Worth market was the sum of ($610) six hundred and ten dollars, and further find that the amount of freight due defendant is the sum of fifty dollars.

9th. The actual cash fair market value of said cattle at the time and place of shipment, to wit, Plain Dealing, La., was the sum of $299.20.

10th. Defendant railway company and its connecting line at Texarkana are common carriers for hire.

From the above facts I find the following conclusions of law, to wit:

1st. The quarantine regulations above mentioned, established by the proclamation of the governor of the State, is a regulation of or an interference with interstate commerce in that its effect is to pro-

hibit the importation of all cattle from the State of Louisiana into the State of Texas, whether affected with or capable of communicating the diseases mentioned in said proclamation or not, and is therefore void as being in contravention of section 8 of article 1 of the Constitution of the United States. Had the Live Stock Sanitary Commission of the State found upon investigation that charbon or anthrax had broken out among the entire cattle of the State of Louisiana, and that all cattle of the State of Louisiana were liable to communicate either of said diseases to cattle of the State of Texas, and had said proclamation of the governor been based upon said finding, then, I think, it would have been in law a police regulation of no greater scope than necessary to the protection of cattle in the State of Texas, and therefore valid, even though it did interfere with interstate commerce.

2nd. The stipulation in the contract of shipment limiting the damages in case of total loss of cattle to the actual cash value thereof at the time and place of shipment to a fixed sum per head is contrary to law, and therefore void, the correct measure of dam-
17 ages in such case being the reasonable market value of the cattle so lost at the point of destination.

3rd. The plaintiff is entitled to recover of the defendant the sum of $610, the value of the cattle lost by him at the time and place of destination, less the sum of fifty dollars freight charges due defendant for said shipment, leaving a balance of $560, together with interest thereon from August 28, 1897, up to the present time, at the rate of six per cent. per annum, making a total of $578.10, and judgment is rendered accordingly.

IRBY DUNKLIN, *Judge.*

In the District Court of Tarrant County, Texas, 48th District.

W. P. SMITH
vs.
ST. LOUIS — SOUTHWESTERN RAILWAY COMPANY OF TEXAS. } 14191.

It is hereby agreed by and between parties plaintiff and defendant that the hereto-attached copy (marked Exhibit A) of the proclamation of the governor of Texas, dated the 5th day of June, 1897, may be used in evidence in this cause, subject only to such objections as the original, duly authenticated and proved, would be subject to.

This February 17th, 1898.

HENDRICKS & HENDRICKS,
Attorneys for Plaintiff.
PERKINS, GILBERT & PERKINS,
Attorneys for Defendant.

(EXHIBIT A.)

Proclamation.

Whereas the Live Stock Sanitary Commission of Texas has this day recommended the adoption of the following regulations:

"The Live Stock Sanitary Commission of the State of Texas have been reliably informed that cattle, mules and horses in
18 southern portion of Jefferson county, State of Texas, are affected with a disease known as charbon or anthrax, and are liable to impart such disease to cattle, mules and horses ranging in upper portion of Jefferson and other counties, from this time forth to the fifteenth day of November, 1897, no cattle, mules or horses, are to be transported or driven north or west of Taylor and Salt bayous, said bayous running across the southern portion of Jefferson county, State of Texas. This order is given for the purpose of quarantining all cattle, mules, and horses south and east of said Taylor and Salt bayous. The Texas Live Stock Commission has reason to believe that charbon or anthrax has or is liable to break out in the State of Louisiana. From this time forth to the 15th day of November, 1897, no cattle, mules or horses are to be transported or driven into the State of Texas from the State of Louisiana. The Live Stock Sanitary Commission of the State of Texas hereby order that any violation of any of the aforesaid rules and regulations by moving of any cattle, mules or horses north of said bayous, or out of Louisiana into the State of Texas, is contrary to said rules and regulations, and shall be an offense and punishable as provided by the laws of the State of Texas."

Now, therefore, I, C. A. Culberson, governor of Texas, in conformity with the provisions of chapter 7, title 102, of the Revised Statutes of Texas of 1895, do hereby declare that the quarantine lines, rules and regulations set forth in the above-recited order of the Live Stock Sanitary Commission of Texas shall be in full force and effect from and after this date.

In witness whereof I have hereunto set my hand, and caused the seal of State to be affixed at Austin, this 5th day of June, A. D. 1897.

[SEAL.]

C. A. CULBERSON,
Governor of Texas.

By the governor:

J. W. MADDEN,
Secretary of State.

19 Filed April 14th, 1898.

R. H. McNATT,
District Clerk.

Defendant's Motion for New Trial.

Filed April 16, 1898.

In the District Court, 48th Judicial District, Tarrant Co., Texas.

W. P. SMITH
vs.
ST. LOUIS — SOUTHWESTERN R'Y CO. OF TEXAS. } 14191.

Now comes the defendant and moves the court to set aside the judgment herein rendered on the 14th day of April, 1898, and to grant it a new trial for the following reasons:

1. Because the court erred in holding that the quarantine statute of Texas, and the orders and regulation and proclamation thereunder promulgated in accordance with law by the Live Stock Sanitary Commission, and the proclamation of the governor of Texas, is null and void, because it is a regulation of or an interference with interstate commerce and in contravention of section 8, article 1, of the Constitution of the United States, and because said statute and the orders of the Live Stock Sanitary Commission of Texas and the proclamation of the governor are merely police regulations adopted and promulgated for the protection of the live-stock interests of the State of Texas, and are binding and valid as police regulations, and are not in contravention of section 8, article 1, of the Constitution of the United States or any other provision of that instrument.

2nd. Because the court erred in holding that the stipulation in the contract of shipment as found in his findings of fact, to wit, "that in case of a total loss of any of the live stock covered by this contract from any cause for which the first party will be liable, payment will be made thereof on the basis of the actual cash value at the time and place of shipment," is not a valid and binding
20 stipulation in a contract such as this is, and in holding that the measure of damages in this case is the reasonable market value of the cattle so lost at destination.

3. Because the court erred in holding that plaintiff is entitled to recover the market value of said cattle at Fort Worth, and because, even if the statute, orders, and proclamation of the governor be unconstitutional and void, plaintiff in this cause is only entitled to recover the market value of the cattle at the time and place of shipment, found by the court to be $299.20, which was tendered to plaintiff, and the court erred in not rendering judgment upon his findings of fact in favor of defendant and for its costs.

P. P. MASON,
PERKINS, GILBERT & PERKINS,
Attorneys for Defendant.

Filed April 16th, 1898.

R. H. McNATT,
District Clerk.

Order on Motion for New Trial, April 16, 1898.

W. P. SMITH
vs.
ST. L. & S. W. R'Y CO. OF TEX. } 14191.

Order on motion for new trial, April 16th, 1898.

This day came the parties, by their respective attorneys, and then came on to be heard the defendant's motion for a new trial filed herein; and the court having heard said motion and being fully advised in the premises, it is the opinion of the court that the law is for the plaintiff. It is therefore ordered by the court that said motion be, and the same is hereby, overruled; to which ruling of the court the defendant excepts and in open court gives notice of appeal to the court of civil appeals for the second supreme judicial district of Texas.

21 *Appeal Bond.*

Filed May 3, 1898.

W. P. SMITH
vs.
ST. LOUIS — SOUTHWESTERN RAILWAY COMPANY OF TEXAS. } 14191.

Whereas in the above numbered and entitled cause pending in the 48th judicial district court of Tarrant county, Texas, and at a regular term of said court, to wit, on the 14th day of April, 1898, the said W. P. Smith recovered judgment against the said St. Louis — Southwestern Railway Company of Texas for the sum of five hundred and four dollars and $\frac{31}{100}$ dollars ($504.31), with interest thereon from the 28th day of August, 1897, at the rate of 6% per annum and all costs of suit, from which judgment the said St. Louis — Southwestern Railway Company of Texas has taken an appeal to our court of civil appeals for the second supreme judicial district of Texas, and desires to suspend the execution of said judgment during the pendency of said appeal:

Now, therefore, we, St. Louis — Southwestern Railway Company of Texas, as principal, and N. Harding and W. G. Turner, as sureties, acknowledge ourselves bound to pay W. P. Smith the sum of fourteen hundred dollars, conditioned that the said Saint Louis — Southwestern Railway Company of Texas, appellant, shall prosecute its appeal with effect, and in case the judgment of the supreme court or the court of civil appeals shall be against it, it shall perform its judgment, sentence, or decree, and pay all such damages as said court may award against it.

Witness our hands this 30th day of April, A. D. 1898.

ST. LOUIS — SOUTHWESTERN RAILWAY COMPANY OF TEXAS,
By J. E. GILBERT, *One of Its Attorneys.*
W. G. TURNER.
N. HARDING.

22 Approved May 3rd, 1898.

R. H. McNATT,
District Clerk.

Filed May 3rd, 1898.

R. H. McNATT,
District Clerk.

Assignment of Errors.

Filed May 26, 1898.

In the District Court, 48th Judicial District.

W. P. SMITH
vs.
ST. L. — S. W. R'Y CO. OF TEXAS.

Now comes the defendant in the above numbered and entitled cause and assigns the following errors of law:

1st. The honorable district judge erred in his first conclusion of law in holding that "the quarantine regulations above mentioned established by the proclamation of the governor of the State is regulation of or interference with interstate commerce, in that its effect is to prohibit the importation of all cattle from the State of Louisiana into the State of Texas, whether effected with or capable of communicating the disease mentioned in said proclamation or not, and is therefore void as being in contravention of section VIII, article 1, of the Constitution of the United States."

His reason for thus holding which immediately follows is illogical and untenable. The quarantine law as promulgated and set in operation by said proclamation was valid and not in contravention of the Constitution of the United States or any clause or section in that instrument.

2. The honorable district judge erred in his second conclusion of law that "the stipulation in the contract of shipment limiting the damages in case of total loss of the cattle to the actual cash value at the time and place of shipment to a fixed sum per head is contrary to law, and therefore void, and that the correct measure of damage in such cases should be the reasonable market value of the
23 cattle so lost at the point of destination." The law is exactly the reverse of his honor's holding.

3rd. The honorable district judge erred in his third and last conclusion of law in rendering judgment for the plaintiff for $610, the value of said cattle at the place of destination, less freight charges, etc.

If plaintiff was entitled to recover in any sum, the amount under the contract of shipment should have been the value of the cattle at the time and place of shipment found by the court in his ninth finding of fact to be $299.20. It was error to render any judgment for plaintiff. The judgment should have been for defendant. For these errors the defendant insists that the judgment of the district

court should be reversed and judgment for the defendant be rendered by this honorable court.

PERKINS, GILBERT & PERKINS AND
P. P. MASON, *Attorneys for Defendant.*

Filed May 26th, 1898.

R. H. McNATT,
District Clerk.

Additional Assignment of Errors.

Filed June 1, 1898.

In the District Court, 48th Judicial District.

W. P. SMITH
vs. } 14191.
ST. LOUIS — SOUTHWESTERN R'Y CO. OF TEXAS.

Now comes appellant and files the following additional assignments of error;

The court erred in holding that the quarantine statute of Texas and the orders, regulations, and proclamations thereunder promulgated, as shown in this case to have been done, are and were null and void, because in contravention of section 8, article 1, of the Constitution of the United States.

24 1. Because the statute of Texas, the orders of the Live Stock Sanitary Commission, and the proclamation of the governor are and were mere police regulations, and therefore valid and binding upon the parties to this action.

2nd. Because the Live Stock Sanitary Commission and the governor found as a matter of fact that the conditions authorizing the issuance of the orders and proclamation, as shown to have been done in this case, existed at the time and before they were issued, and there is no evidence tending to show that said findings by said officials were not true, and the facts will be conclusively presumed to exist in the absence of evidence to the contrary. Therefore the findings and judgment of the court are contrary to the law and evidence.

P. P. MASON,
PERKINS, GILBERT & PERKINS,
Attorneys for Appellant.

Filed June 1st, 1898.

R. H. McNATT,
District Clerk.

Additional Assignment of Errors.

Filed July 1, 1898.

W. P. SMITH
vs.
ST. LOUIS — SOUTHWESTERN R'Y CO. OF TEXAS.

Third. The court erred — that the defendant was liable in damages for obeying the laws of this State and the orders and proclamations by its constituted authorities, because it is the duty of citizens of the State to obey said laws and orders, even if unconstitutional, until they have been declared invalid by a competent tribunal, and for such obedience the citizen is neither liable criminally nor in civil damages.

Fourth. The court erred in holding appellant liable for obeying a law which had not been declared unconstitutional until the
25 decision in this case, because the laws of a State are presumed to be valid until judicially declared void, and because appellee by his own acts was guilty of a violation of law in shipping the cattle into the State, and acted with full knowledge of the orders and proclamation promulgated according to law, and contributed and brought about whatever damages he sustained.

P. P. MASON,
GILBERT, PERKINS & PERKINS,
Attorneys for the St. Louis — Southwestern Railway Company of Texas.

Filed July 1st, 1898.

R. H. McNATT,
District Clerk.

Bill of Costs.

W. P. SMITH
vs.
ST. L. — S. W. R'Y CO. } 14191.

Clerk's fees.	Plaintiff.	Defendant.
Filing and docketing	.35	
Issuing citations	1.50	
Recording returns	.75	
Filing papers	.40	1.05
Certificates	....	.25
Issuing subpœnas	.85	
Motions	....	.30
Entering appearances	.15	.15
Entering continuances	.20	
Entering orders	.75	.75
Final judgment	.75	
Taxing costs	.25	

Issuing execution and ret	....	
Appeal bond	....	1.60
Transcript	....	14.00
Brief & certif	....	.60
Issuing notices	....	1.50
Total clerk's fees	$5.95	$20.20

26 Sheriff's fees.	Plaintiff.	Defendant.
Executing citations	1.60	
Executing subpœnas	7.60	
Executing notices	....	1.10
Sheriff's jury fee	.50	
Sheriff's costs	9.70	1.10
Notary fees, W. P. Boggs, N. P.	....	11.00
Clerk's costs brought over	5.95	20.20
Total	$15.65	$32.30

$47.95.

Certificate.

THE STATE OF TEXAS, }
County of Tarrant. }

I, R. H. McNatt, clerk of the district court of Tarrant county, Texas, do hereby certify that the above and foregoing is a true and correct copy of all the proceedings had in said cause No. 14191, W. P. Smith *vs.* St. Louis — Southwestern Railway Company of Texas, as the same appears on file and of record in my said office.

Given under my hand and seal of said court, at office, in the city of Fort Worth, Texas, this the 14th day of July, A. D. 1898.

[L. S.] R. H. McNATT,
Clerk District Court, Tarrant County, Texas.

Indorsement.

Indorsed: No. 3106. St. L. — S. W. R'y Co., appellant, *vs.* W. P. Smith, appellee. From the district court of Tarrant county.
27 Applied for by P. P. Mason, attorney for appellant, on the 1st day of July, 1898, and delivered to P. P. Mason on the 14th day of July, 1898. R. H. McNatt, clerk district court, Tarrant county, by Geo. C. Ward, deputy. Filed in court of civil appeals, at Fort Worth, Texas, the 16th day of July, 1898. W. L. Huff, clerk court of civil appeals, second supreme judicial district of Texas.

Opinion of Court of Civil Appeals.

ST. LOUIS — SOUTHWESTERN RAILWAY CO. OF TEXAS, Appellant,
vs.
W. P. SMITH, Appellee.
No. 3106.

From the district court of Tarrant county.

Opinion.

Appellee brought this suit to recover the value of certain cattle shipped from Plain Dealing, Louisiana, upon a through bill of lading to Fort Worth, Texas, alleging that appellant accepted the shipment under said bill from a connecting carrier at Texarkana, Texas, and carried the cattle to Fort Worth, where the freight was tendered to it, and delivery refused.

Appellant answered by general denial, and that at the time and long before said shipment it was a violation of the quarantine laws and police regulations of the State of Texas to bring Louisiana cattle, such as these were, into Texas at that time, and plead the orders of the Live Stock Sanitary Commission and the proclamation of the governor putting same in force relative to Louisiana cattle; that appellant had no actual knowledge of said orders and proclamation, and only the same constructive notice as the
28 general public had by the publication thereof in the daily papers, but that appellee not only had constructive notice, but actual notice, of such orders and regulations before the shipment; that appellant received the shipment at Texarkana, Texas, and carried them to Fort Worth, and, upon being there advised of the quarantine regulations, immediately asked, by telegraph, *authority* from the Live Stock Sanitary Commission for authority to deliver said cattle to consignee, which was refused; that the cattle were returned to its connecting line at Texarkana, and by it carried to Plain Dealing, Louisiana, and there tendered to the consignor, who was still at that place, and who was one of the joint owners of the cattle, and who had gone from Fort Worth to Plain Dealing with a drove of Texas ponies to trade for cattle, and represented himself and the others interested in said shipment; that appellee and his co-owners contributed to and brought about the damages they sustained, if any, by having said shipment made with knowledge and in violation of the said quarantine regulations; that by the terms of the contract the damages for which appellant should be liable were such only as occurred on its own line, and that none occurred while the shipment was in its possession; that by the terms of the contract it was agreed that in case of total loss the value of the cattle at the time and place of shipment should be the measure of damages.

Appellee, by supplemental petition, alleged that the said quarantine regulations were in violation of section 8, article 1, of the Con-

stitution of the United States, and the shipment was a continuous and interstate shipment; that the order of the Live Stock Sanitary Commission and the proclamation of the governor fail to show that the cattle were affected with the disease quarantined against, and affirmatively alleged them to be sound and well and incapable of communicating disease to other cattle.

The court held (1) that the said quarantine regulations are
29 violative of section 8, article 1, of the United States Constitution, and therefore void and no protection to appellant; (2) that the stipulation in the contract limiting damages in case of total loss to the value of the cattle at the time and place of shipment is void; and (3) that appellee was entitled to recover their value at the place of destination, for which he gave judgment, and from which judgment this appeal is prosecuted.

There is no separate statement of facts. The findings by the court and Exhibit A called for therein are as follows:

"1. I find that the shipment of cattle in controversy was upon a through bill of lading issued by the St. Louis — Southwestern Railway Co., and that Plain Dealing, Louisiana, was the initial point of shipment, and Fort Worth, Tarrant county, Texas, the point of destination.

"2. The defendant, The St. Louis — Southwestern Railway Co. of Texas, connected with the former-named railroad at Texarkana, Texas, and the cattle were delivered to defendant at Texarkana by the connecting line, and the same was a through and continuous shipment from said Plain Dealing, Louisiana, to place of destination.

"3. The bill of lading was executed on the 27th day of August, 1897, and the cattle reached Fort Worth on the evening of the 28th of said month, and upon their arrival the owners were ready to receive the same, and the said owners at Fort Worth, Texas, tendered the amount of freight, to wit, $50, to the defendant railroad company and demanded the cattle, and the said tender of freight charges and demand for the delivery of the cattle at Fort Worth, Texas, was refused by defendant.

"4. The cattle remained in the pens of defendant until August
31, 1897, and the stock yards at Fort Worth refused to receive said cattle in their pens on account of the proclamation of the
30 governor of Texas quarantining Louisiana cattle, and defendant also made application to the Live Stock Sanitary Commission of Texas for permission to deliver said cattle to the owners thereof, and on account of the governor's proclamation against Louisiana cattle the same was refused, and thereafter said defendant shipped said cattle back to Texarkana, Texas, and there delivered them to the line of railway from which defendant received them, which line returned said cattle to Plain Dealing, Louisiana, and there tendered said cattle to the shippers, who refused to receive them, and said line, after properly advertising them at the place from which they were received, sold said cattle and tendered $299.20, the proceeds thereof, less pasturage at Plain Dealing, Louisiana, to the owners of said cattle, which also was refused.

"5. At the time said cattle were received at Plain Dealing, Louisiana, and at the time of their arrival at Fort Worth, and the tender of the freight charges made to defendant by the owners of the cattle, the Live Stock Sanitary Commission had recommended the adoption of the following regulations with reference to Louisiana cattle:

"'The Texas Live Stock Commission has reason to believe that charbon or anthrax has or is liable to break out in the State of Louisiana, and from this time forth until the 15th day of November, 1897, no cattle, mules, or horses are to be transported or driven into the State of Texas from the State of Louisiana.'

"And C. A. Culberson, governor of Texas, on the 5th day of June, 1897, in conformity with law, regularly promulgated said order and regulations of said commission by proclamation (a full copy of which is hereto attached and made a part hereof), and the quarantine thereby established against cattle in Louisiana was in full force at the time of the shipment in question, if the same was a valid quarantine regulation.

"6. The bill of lading under which said cattle were shipped contained the following stipulations:

"'That in case of a total loss of any of the live stock
31 covered by this contract, for any cause for which the first party will be liable, payment thereof will be made on the basis of the actual cash value at the time and place of shipment, but in no case to exceed $100.00 for each horse, pony, gelding, mare, stallion, mule, or jack, $50.00 for each ox, $30 for each cow, $10.00 for each calf or hog, $3.00 for each sheep or goat, and in case of injury or partial loss the amount of damages claimed was not to exceed the same proportion.'

"The contract for the shipment of said cattle was in writing and signed by the carrier, and also by R. F. Miller, shipper, who acted for himself and as agent for the other owners of the cattle shipped, and, among other things, said contract contains the following agreement:

"'That for the consideration and for the covenants and conditions therein contained, the said first party (meaning the initial carrier) will transport for the said second party, the live stock described below, and the parties in charge thereof as hereinafter provided, viz: one car said to contain 46 head of stock cattle from Plain Dealing, Louisiana, station, to Fort Worth station, consigned to W. P. Smith, at the rate of $50.00 per car from Plain Dealing, Louisiana, to Fort Worth, Texas, subject to the minimum weights and length of car specified and provided for in tariff; said rate being less than the rate charged for shipments transported at carrier's risk. For which reduced rate and other considerations, it is mutually agreed between the parties hereto as follows:

"'First. It is mutually agreed that if the destination of such cars be beyond the line of the initial carrier, then said initial carrier agrees, and it, and each connecting carrier in turn is hereby authorized to deliver said cars to its connecting carrier for transportation under the terms, stipulations, limitations, and agreements herein

contained, and each and every carrier receiving said cars for transportation shall be deemed to adopt the terms and conditions
32 hereof, and assume the like liabilities, and shall be entitled to all the provisions, exemptions from, and limitations of liability, and other stipulations, covering the measure and adjustment of damages herein contained.'

"I further find that said cattle were traded for in exchange for horses and mules, no money being paid for them, and were shipped after the promulgation establishing the quarantine regulations above mentioned.

"7. All the interest of the shippers and owners of said cattle and proceeds thereof, and all the claims arising out of the transactions involved in this suit, had been transferred before suit by the respective owners of said cattle, to wit, S. P. Clark, W. A. Maddox, H. P. Miller, J. S. Collier, and J. A. J. Reeves, to the plaintiff herein, and he is now the owner of all the claims arising therefrom, and said cattle were Louisiana cattle, traded for in and around Plain Dealing, Louisiana, and at the time they were received by defendant at Texarkana defendant had no actual notice of the orders of the Live Stock Sanitary Commission and the governor's proclamation, but the owners of said cattle did have actual knowledge of the promulgation of the above-mentioned proclamation by the governor.

"8. It is agreed in this cause, by written agreement on file, that there were 46 head of cattle comprehended in this shipment, of age and character as follows: Eighteen cows, six of which had calves following them; seven one-year-old steers; three heifers two years old each; six two-year-old steers; one heifer one year old; one bull two years old; one bull three years old, and one four years old, and two three-years-old steers. And I further find that the actual fair market value of said cattle at the time of their arrival at Fort Worth and the refusal of the tender of the freight charges, in the Fort Worth market, was the sum of $610. And I further find that the amount of freight due defendant is the sum of $50.

33 "9. The actual cash fair market value of said cattle at the time and place of shipment, to wit, Plain Dealing, Louisiana, was the sum of $299.20.

"10. Defendant railway company and its connecting line at Texarkana are common carriers for hire."

The proclamation of the governor, Exhibit A referred to, is as follows:

"Whereas, the Live Stock Sanitary Commission of Texas has this day recommended the adoption of the following regulations:

"'The Live Stock Sanitary Commission of the State of Texas have been reliably informed that the cattle, mules and horses in the southern portion of Jefferson county, State of Texas, are affected with disease, known as charbon or anthrax, and are liable to impart such disease to cattle, mules and horses ranging in upper portion of Jefferson and other counties, from this time forth to the 15th day of November, 1897, no cattle, mules or horses are to be transported or

driven north or west of Taylor and Salt bayous, said bayous running across the southern portion of Jefferson county, State of Texas. This order is given for the purpose of quarantining all cattle, mules and horses south and east of said Taylor and Salt bayous. The Texas Live Stock Commission has reason to believe that charbon or anthrax has or is liable to break out in the State of Louisiana, from this time forth until the 15th day of November, 1897, no cattle, mules or horses are to be transported or driven into the State of Texas from the State of Louisiana. The Life Stock Sanitary Commission of the State of Texas hereby order that any violation of any of the aforesaid rules and regulations by moving of any cattle, mules or horses north of said bayous, or out of Louisiana into the State of Texas, is contrary to said rules and regulations, and shall be an offense and punishable as provided by the laws of the State of Texas.'

"Now, therefore, I, C. A. Culberson, governor of Texas,
34 in conformity with the provisions of chapter 7, title 102, of the Revised Statutes of Texas of 1895, do hereby declare that the quarantine lines, rules and regulations set forth in the above-recited order of the Live Stock Sanitary Commission of Texas, shall be in full force and effect from and after this date.

"In witness whereof, I have hereunto set my hand, and caused the seal of the State to be affixed, at Austin, this 5th day of June, A. D. 1897.

"C. A. CULBERSON,
"*Governor of Texas.*"

The trial court found the following conclusions of law:

"1. The quarantine regulations above mentioned, established by the governor of the State, is a regulation of or an interference with interstate commerce, in that its effect is to prohibit the importation of all cattle from the State of Louisiana into the State of Texas, whether affected with or capable of communicating the disease mentioned in said proclamation or not, and is therefore void as being in contravention of section 8 of article 1 of the Constitution of the United States.

"Had the Live Stock Sanitary Commission of the State found upon investigation that charbon or anthrax had broken out among the entire cattle of the State of Louisiana, and that all cattle of the State of Louisiana were liable to communicate either of said diseases to cattle of the State of Texas, and had said proclamation of the governor been based upon said finding, then I think it would have been in law a police regulation of no greater scope than necessary to the protection of cattle in the State of Texas, and therefore valid, even though it did interfere with interstate commerce.

"2. The stipulation in the contract of shipment limiting the damages in case of total loss of cattle to the actual cash value thereof
35 at the time and place of shipment to a fixed sum per head is contrary to law, and therefore void, the correct measure of damages in such cases being the reasonable market value of the cattle so lost at the point of destination.

"3. The plaintiff is entitled to recover of the defendant the sum of $610, the value of the cattle lost by him at the time and place of destination, less the sum of $50, freight charges due defendant for said shipment, leaving a balance of $560, together with the interest thereon from August 28, 1897, up to the present time, at the rate of six per cent. per annum, making a total of $578.10, and judgment is rendered accordingly."

Appellant's first assignment of error is as follows: "The court erred in his first conclusion of law in holding that 'the quarantine regulations above mentioned, established by the proclamation of the governor of the State, is a regulation of or an interference with interstate commerce, in that its effect is to prohibit the importation of all cattle from the State of Louisiana into the State of Texas, whether affected with or capable of communicating the disease mentioned in said proclamation or not, and is therefore void as being in contravention of section 8, article 1, of the Constitution of the United States.'"

It will be thus seen that we have before us an important question for solution. It involves the powers of the governor and of the Live Stock Sanitary Commission of Texas, in so far as such powers relate to the protection or attempted protection of the live stock interests of this State, and also the question as to whether the regulation of said commission and the proclamation of the governor in question were violative of section 8, article 1, of the Constitution of the United States. Under this assignment we will consider the questions in the order indicated.

In so far as necessary to be considered, our statutory provisions on the subject are as follows:

Revised Statutes, art. 5043*a*, provides that "there shall be
36 appointed by the governor, and with the consent of the senate, a live stock sanitary commission of the State of Texas, composed of three members." It is then provided that such commissioners shall take the usual oath of office, execute bond, and that the term of office shall be for a "period of two years," etc.

Article 5043*c* provides: "It shall be the duty of the commission provided for in article 5043*a* to protect the domestic animals of this State from all contagious or infectious diseases of a maligant character, whether said diseases exist in Texas or elsewhere; and for this purpose they are hereby authorized and empowered to establish, maintain, and enforce such quarantine lines and sanitary rules and regulations as they may deem necessary. It shall also be the duty of said commission to co-operate with live-stock quarantine commissioners and officers of other States and Territories, and with the United States Secretary of Agriculture, in establishing such interstate quarantine lines, rules, and regulations as shall best protect the live-stock industry of this State against Texas or splenetic fever. It shall be the duty of said commission, upon receipt by them of reliable information of the existence among the domestic animals of the State of any malignant disease, to go at once to the place where any such disease is alleged to exist, and make a careful examination of the animals believed to be affected with any such dis-

ease, and ascertain, if possible, what, if any, disease exists among the live stock reported to be affected, and whether the same is contagious or infectious, and if said disease is found to be of a malignant, contagious or infectious character, they shall direct and enforce such quarantine lines and sanitary regulations as are necessary to prevent the spread of any such disease. And no domestic animals infected with disease, or capable of communicating the same, shall be permitted to enter or leave the district, premises, or grounds so quarantined, except by authority of the commissioners. The said commission shall also, from time to time, give and enforce
37 such directions and prescribe such rules and regulations as to separating, feeding, and caring for such diseased and exposed animals as they shall deem necessary to prevent the animals so affected with such disease from coming in contact with other animals not so affected. And the said commissioners are hereby authorized and empowered to enter upon any grounds or premises to carry out the provisions of this act."

In this connection it is important to observe that the first paragraph of this article makes it the duty of the commission to protect the domestic animals of this State from all contagious or infectious diseases of a malignant character, whether said diseases exist in Texas or elsewhere, and for that purpose it is empowered to establish and maintain such quarantine lines, rules, and regulations as it may deem necessary.

It is important also that it be observed that the duty and power thus imposed is general in its scope, and that the time when and manner in which this duty and power is to be exercised are not defined in the statute nor any rules or regulations prescribed. The commissioners may establish such lines and such rules and regulations as they "may deem necessary." So that in all respects the duty and the power is general, and the time and manner of its performance is left with the commissioners.

It is to be noted also that the duty and power above noted is to be distinguished from that indicated in the succeeding paragraphs of the statute. The second paragraph declares it to be the duty of the commissioners to co-operate with like commissioners of other States or Territories and of the United States in establishing such quarantine lines, rules, and regulations as shall best protect the live-stock industry of this State against Texas or splenetic fever. The next or third paragraph declares it to be the duty of said commission, upon receipt of reliable information of the existence among the domestic animals of this State of disease, to go and in-
38 vestigate, and if disease be found, to establish quarantine lines, etc., so as to prevent the spread of it.

Article 5043*i*, Revised Statutes, is as follows: "The Live Stock Sanitary Commission shall have power to call upon any sheriff, deputy sheriff or constable to execute their orders, and such officers shall obey the orders of said commissioners; and the officer or officers performing these duties shall each be entitled to two dollars and fifty cents per day for himself and horse, which payment shall be made upon a sworn account, approved by said commissioners;

provided, said expenses under this article shall not exceed in any event five hundred dollars per annum."

Article 5043*k* is as follows: "Any quarantine line that may be fixed by the Live Stock Sanitary Commission, against Texas or splenetic fever, shall be so fixed as to conform to the Federal quarantine line established, or that may be established, by the United States Department of Agriculture; provided, however, that as to the shipment or movement of live stock within the limits of the State, such quarantine lines, and the regulations in relation thereto, shall not apply from the first day of November to the fifteenth day of May of each year; provided, the quarantine line now recognized and established by Federal authority within the State of Texas shall not be changed prior to December 1, 1893, but said line as is now established shall remain in full force until said date."

Then our law provides appropriate penal provisions for violations of quarantine laws.

It is universally conceded that the power to pass proper quarantine laws is among the powers reserved to the several sovereign States of this Union. As was said by Chief Justice Marshall, in speaking of inspection laws, in the case of Gibbons *v.* Ogden, 9 Wheat., 203: "They form a portion of that immense mass of legislation which embraces everything within the territory of a State not surrendered to the General Government; all which can
39 be most advantageously exercised by the States themselves. Inspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of a State, and those which respect turnpike roads, ferries, &c., are component parts of this mass." As was said in that case, "that such laws (inspection laws in that case) may have a remote and considerable influence on commerce will not be denied, but that the power to regulate commerce is the source from which the right to pass them is derived cannot be admitted." Again, as was said by the court in Thorpe *v.* Railroad, 27 Vt., 149, "it extends to the protection of the lives, limbs, health, comfort, and quiet of all persons, and the protection of all property within the State. According to the maxim *Sic utere tuo ut alienum non laedas*, which being of universal application, it must, of course, be within the range of legislative action to define the mode and manner in which every one may so use his own as not to injure others."

This power has been exercised and upheld in a great variety of cases, and is so well established that we think it will be unquestioned, and extended discussion is therefore unnecessary. Crowley *v.* Christensen, 137 U. S., 86; Lawton *v.* Steele, 152 U. S., 136; Slaughter-house cases, 16 Wall., 36; Patterson *v.* Kentucky, 7 Otto, 501; Morgan *v.* Louisiana, 118 U. S., 455; Railway *v.* Haber, 169 U. S., 613.

The difficulty in the present case arises in the application of the general rule, for it must be conceded that "while a State may enact sanitary laws, while for the purpose of self-protection it may establish quarantine and reasonable inspection regulations, while it may prevent persons and animals suffering under contagious or infectious

diseases from entering the State, it cannot interfere with transportation into or through its borders beyond what is absolutely necessary for its self-protection." Hannibal & St. Joseph Railroad Co. *v.* Husen, 95 U. S., 465; Brunner *v.* Rehman, 138 U. S., 78; Scott *v.* Donald, 165 U. S., 178, 180.

40 The question is not free from difficulty. It is often a matter of great perplexity to undertake to trace the sometimes shadowy line between the lawful exercise of the police power of the State and the conceded power of Congress "to regulate commerce with foreign nations and among the several States and with the Indian tribes." However, when a statute or police regulation, such as a quarantine line and regulations duly promulgated by the legally constituted authority, is attacked on the ground of its unconstitutionality, we think the burden is entirely upon the party insisting on its invalidity to clearly point out its vice. Courts have uniformly refused to declare a law or lawful regulation of the legislative body unconstitutional except when impelled thereto by the clearest reason.

The real question arising under this assignment of error is, Has it been shown clearly that the quarantine regulations in question are violative of the section of the Constitution cited? Has it been clearly shown that such regulations were in fact an unnecessary invasion of the power of Congress to regulate commerce between the States?

We have seen that quarantine laws and inspection laws often more or less directly affect interstate commerce; but that fact alone will not justify the inference that the quarantine regulations in question were an unwarranted exercise of the inherent police power of Texas to protect the property of her citizens. Holden *v.* Hardy, 169 U. S., 365, and authorities cited.

The mode in which these regulations were put in force, if at all, is not attacked—that is, it is not questioned that a State may lawfully empower her governor to appoint a commission to whom shall be committed the power of determining the necessity for quarantine regulations and of prescribing the rules necessary to make them effective. In this case it is unquestioned that such a com-

41 mission was appointed, that they declared the quarantine in question, and that it was duly promulgated by proclamation of the governor. These regulations are only questioned because of their alleged infringement of the Constitution.

We think reflection will convince the reasonable mind that a large discretion must necessarily be given a commission of this kind in determining the state of facts rendering a quarantine necessary in the protection of life or property in the State and the time when such quarantine should be declared. No legislative act could provide for every contingency rendering necessary the exercise of the power to exclude persons or things whose introduction might prove destructive to the life or property of our citizens, and we have seen that our law has in fact vested in the sanitary commission appointed thereunder a very wide discretion, and we maintain that when that discretion has been called into exercise and formal quar-

antine lines designated and the rules and regulations declared that are to make it effective, such line and such regulations have all the force of law, and as such should be obeyed by every class of our citizenship, unless it plainly appear that the commissioners have exceeded their powers.

The facts in this case are not disputed. The plaintiff sues as for a conversion, because of a refusal to deliver his cattle at Fort Worth. It is necessary to his recovery that he show that it was the legal duty of the defendant company to make such delivery. It is for the breach of this alleged duty he sues; yet it nowhere appears from the record that before the quarantine line in question was established the sanitary commission did not make the most careful and thorough investigation into the necessity therefor, if, indeed, that matter could in any event be inquired into. So far as the record shows, every animal of the kind prohibited in the State of Louisiana may have been actually affected with charbon or anthrax, and it is conceded that this is a disease different from Texas
42 or splenetic fever, and that it is contagious and infectious and of the most virulent character.

It was shown that appellee's vendors had actual notice of the quarantine, and that appellant had not. It was also shown that after such notice was brought home to appellant it sought permission of the sanitary commission to deliver the cattle. The sanitary commission ruled and ordered otherwise. It has been given power to make rules. It has the power to call upon the sheriff and peace officers to enforce them. It was the duty of such officers to obey the orders of such commission. Our law also provides heavy penalties for a violation of the rules and regulations of the sanitary commission.

In this attitude of the case appellee insists that it was the legal duty of appellant to deliver the cattle in question, and yet he did not even show that the very cattle for the value of which he sues were free from the disease mentioned. So far as the record before us shows, they may every one have been so affected. We are asked to presume to the contrary, and to presume that the action of the commission was not necessary as a precautionary measure; that their judgment and discretion had been wrongfully exercised. We think every presumption should be indulged in aid of the validity of the law.

It may be said that it is not a reasonable presumption that all Louisiana cattle were at the time affected with charbon or anthrax. This may be true. Yet we do not understand that such condition must exist in order to — the validity of a restraining order in the form of a quarantine. If the disease is contagious and infectious, large proportions thereof may have been subject to the influences of the disease, and thereby liable to communicate it to cattle in Texas. From the record we do not know what was the condition in this respect at the time our sanitary commission declared "that charbon and anthrax had or was liable to break out in the State of Louisiana." The necessities of such cases often require prompt action.

If too long delayed, the end to be attained by the exercise of
43 the power to declare a quarantine may be defeated and irreparable injury done.

It is a matter of common history that our State and other States almost annually quarantine against cities and even States in which may be raging some contagious and deadly disease. The result is often to absolutely restrict immigration for the time being from such infected districts. It may happen as a fact that a person seeking admission is not affected with the disease quarantined against and has not been subject to contagion therefrom, yet if he be from the State, city, or district against which there be the quarantine prohibition he cannot enter our State.

The Supreme Court of the United States have declared certain acts of States restrictive of immigration unconstitutional, but we have been unable to find where a quarantine regulation of the kind mentioned has been held to be an unwarranted exercise of power on the part of a State. If it should so happen, for instance, that the yellow fever was epidemic in the island of Cuba, it would not only be within the power, but also the duty of our quarantine officers to quarantine against every man, woman, or child in that island, in all cases, of course, under proper regulations. The object of all such laws is not to unnecessarily restrict immigration nor to regulate commerce between the States. It is true for the time being such laws may absolutely prevent immigration or the introduction of property from the prohibited district, yet the exercise of such a power is absolutely necessary to the protection of life and property. It is a necessary incident of the law of self-defense. They are and are intended to be but temporary in character. The law in question was in no sense a regulation of commerce. It originated in a desire to protect the stock interests of Texas. It but provided for a suspension of the introduction of cattle, etc., for a very limited time.

44 Without further argument or citation of authority, our conclusion is that this case should be reversed and rendered for appellant, and it is so ordered.

CONNER, *Chief Justice.*

Filed in court of civil appeals Feb. 18, 1899.

W. L. HUFF, *Clerk.*

Judgment of Court of Civil Appeals.

St. Louis — Southwestern Railway Company *vs.* W. P. Smith.	3106. From Dist. Court, Tarrant County. February 18, 1899. Opinion by Mr. Conner, Ch. J.

This cause came on to be heard on a transcript of the record, and the same being inspected, because it is the opinion of this court that there was error in the judgment, it is therefore considered, and so ordered, adjudged, and decreed, that the judgment of the court

below be reversed, and this court proceeded to render such judgment as should have been rendered by the court below. It is the order of this court that the appellee, W. P. Smith, take nothing by this suit, and that the appellant, The Saint Louis — Southwestern Railway Co., go hence without day, and that it have and recover of and from said appellee its costs. It is further ordered that said W. P. Smith pay all costs in this behalf expended, and that this decision be certified below for observance.

45 *Motion for Rehearing.*

In the Court of Civil Appeals, Second Supreme Judicial District of Texas, at Ft. Worth.

ST. LOUIS — SOUTHWESTERN RAILWAY COMPANY OF TEXAS, Appellant,
vs.
W. P. SMITH, Appellee.
} No. 3106.

To the honorable judges of said court:

Now, at this term, comes W. P. Smith, appellee, and moves the court for a rehearing in the above styled and entitled cause, and shows that Perkins, Gilbert and Perkins are the attorneys of record for the appellant in said cause, and that J. E. Gilbert, a member of said firm, is a resident citizen of Dallas county, Texas, and for grounds for a rehearing herein appellee says:

First. The honorable court of civil appeals erred in sustaining appellant's first assignment of error and in holding that the alleged recommendation adopted by the Live Stock Sanitary Commission of the State of Texas, prohibiting the importation of all cattle, mules, and horses from the State of Louisiana into the State of Texas from the 5th day of June, 1897, until the 15th day of November of said year, and the proclamation of the governor of Texas putting said recommendation in force, as set forth in said proclamation, as appears from a copy of the same and identified as "Exhibit A" in the record and set out in the court's opinion herein, was not a burden upon and an undue interference with commerce between the said State of Louisiana and the State of Texas and an invasion of the powers of Congress to regulate commerce between the said two States.

Second. The court erred in impliedly holding that the recommendation of the said Live Stock Sanitary Commission above mentioned was a quarantine measure within the police power of
46 the State of Texas to adopt and enforce.

Third. The court erred in holding inferentially that it was incumbent upon appellee to prove on the trial of this cause that the said cattle, the value of which was sued for by him herein, were free from disease at the time of the shipment.

Fourth. The court erred in holding that said alleged quarantine regulation was authorized by the laws of the State of Texas.

Fifth. The court erred in not taking into consideration and in

not finding that Congress, by the act of May 29, 1884 (23 Stat. at L., 31, chap. 60), known as "the animal-industry act," together with the acts of March 3, 1891 (26 Stat. at L., 1044, 1049, chap. 544), and that of August 8, 1894, session 2, chap. 238; also that of April 14th, 1896 (chap. 140, p. 108), appropriating money to carry out the provisions of that act, covered substantially the whole subject of transportation from one State to another State — live stock liable to impart or capable of communicating infectious or contagious diseases, and in not holding that the State of Texas had no authority without co-operating with the Secretary of Agriculture of the United States before attempting to adopt quarantine lines between the State of Louisiana and the State of Texas, for appellee says that by the act mentioned Congress had provided for a general system of quarantine and had adopted means for the regulation of shipments of cattle liable to impart or capable of communicating infectious or contagious diseases from one State to another.

Sixth. The court erred in the following conclusion: "Yet it nowhere appears from the record that before the quarantine line in question was established the sanitary commission did not make the most careful and thorough investigation into the necessity therefor, if, indeed, that matter could in any event be inquired into. So far as the record shows, every animal of the kind prohibited in
47 the State of Louisiana may have been actually affected with charbon or anthrax, and it is conceded that this is a disease different from Texas or splenetic fever, and that it is contagious and infectious and of the most virulent character."

Said conclusion was not justified by the evidence in this cause for the reason that said recommendation of said sanitary commission shows upon its face that no investigation had been made, or, if any, only a partial one, for said commission does not find as a fact that the said disease of anthrax or charbon did actually exist in the State of Louisiana, but made said broad and sweeping prohibition under the guise of a quarantine regulation from a mere rumor that said disease "has or is liable to break out in the State of Louisiana."

Seventh. The court erred in its conclusion that inasmuch as said recommendation for the prohibition of the importation of cattle from Louisiana into the State of Texas was merely temporary in its character, that the same for that reason constituted it a quarantine measure.

Eighth. The court erred in its conclusion that it was the duty of appellee in the trial of this cause to show that said cattle, the value of which was sued for by him, were free from disease, and therefore not subject to the regulations complained of.

(*a.*) There was no contention that said cattle were diseased, nor any allegations to that effect in said appellant's answer in this cause.

(*b.*) Appellant, defendant in the court below, did not attempt to justify the conversion of said cattle, but relied for a defense wholly upon the broad powers under which said Live Stock Sanitary Commission of Texas assumed to act in laying an embargo upon the transportation of cattle from the State of Louisiana into the State of

Texas during the period named in the proclamation of C. A. Culberson, governor.

Ninth. The court — in reversing and rendering said judg-
48 ment of the trial court, and further erred in not rendering judgment for appellee for the sum of two hundred and ninety-nine ($299.20) dollars and twenty cents, with interest thereon, at the legal rate of six per cent., from the first day of January, 1898, said amount being the admitted proceeds in the hands of appellant arising from the sale of said cattle in Louisiana, as found by the trial court in its fourth conclusion of fact (Tr., p. 19).

Wherefore appellee prays that the judgment of this court, rendered herein February 18, 1899, be set aside and the judgment of the trial court be in all things affirmed, or that the judgment of said trial court be reversed and rendered for said sum of two hundred and ninety-nine ($299.20) dollars and twenty cents, and that the costs in the trial court be taxed against appellant, and the costs of this court be taxed against appellee.

Respectfully submitted.

HENDRICKS AND HENDRICKS,
Attorneys for Appellee, W. P. Smith.

Filed in court of civil appeals March 2, 1899.

W. L. HUFF, *Clerk.*

Order on Motion for Rehearing.

ST. L. — S. W. R'Y CO. *vs.* W. P. SMITH. } 2796, 3106.

MARCH 25, 1899.

This day came on to be heard the motion of appellee for a rehearing in this cause, which, having been heard and considered by the court, is overruled, and the suggestion to reform the judgment in favor of the appellant for the amount tendered shippers at Plain Dealing, La., as found by the court below, is denied on the ground that there is no basis therefor in the pleadings.

49 *Order of Supreme Court on Application for Writ of Error.*

In Supreme Court of Texas, Second District.

W. P. SMITH *vs.* ST. LOUIS — S. W. R'Y CO. OF TEXAS.

MAY 25, 1899.

This day came on to be heard the application of W. P. Smith for a writ of error to the court of civil appeals for the second supreme judicial district, and, the same having been duly considered, it is ordered that said application be refused; that the applicant, W. P. Smith, pay all costs on this application.

I, Charles S. Morse, clerk of the supreme court of Texas, hereby certify that the above is a true and correct copy of the judgment rendered by said court in the above styled and numbered application.

Witness my hand and the seal of said court this the 25th day of May, 1899.

[L. S.] CHAS. S. MORSE, *Clerk*,
By F. T. CONNERLY, *Deputy*.

Bill of Costs in Supreme Court.

Clerk's Office, Supreme Court.

W. P. SMITH *vs.* ST. L.—S. W. R'Y CO. OF TEX. } No. 2248. Certified Copy Bill of Costs, Supreme Court.

Filing application		.50
Docketing petition		.50
Entering appearances of counsel		.50
Filing 2 briefs		.60
Filing 3 papers		.90
Entering orders		.50
	Entering judgment on application	1.00
50	Certified copy of judgment	1.00
	Taxing costs of application	.50
Certified copy bill of costs		1.00
	Total	7.00

I, Charles S. Morse, clerk of the supreme court of Texas, hereby certify that the above copy of the original bill of costs is true and correct.

Witness my hand and the seal of said court, at Austin, this the 25th day of May, 1899.

[L. S.] CHAS. S. MORSE, *Clerk*.

Application for Allowance of Writ of Error.

The Court of Civil Appeals of the Second Supreme Judicial District of Texas.

W. P. SMITH, Plaintiff in Error,
vs.
ST. LOUIS & SOUTHWESTERN RAILWAY COMPANY OF TEXAS.

Petition for writ of error.

To the Honorable T. H. Conner, chief justice of the court of civil appeals of the second supreme judicial district of Texas, at Fort Worth:

And now comes W. P. Smith, hereinafter styled plaintiff in error, and, complaining of The St. Louis & Southwestern Railway Com-

pany of Texas, hereinafter designated as defendant in error, with respect shows that plaintiff is a resident citizen of Tarrant county, Texas, and that said defendant is a private corporation, duly incorporated, and is a common carrier for hire; that its attor-
51 neys of record herein are Perkins, Gilbert & Perkins, of Dallas county, Texas.

Plaintiff presents this his application for writ of error from the Supreme Court of the United States to this honorable court, and to show that said Supreme Court has jurisdiction to entertain an appeal herein by writ of error and to determine and consider the several matters complained of in the assignment of errors filed herewith, and to further show that the honorable Chief Justice of this court has power and authority to grant this application, plaintiff respectfully represents that this suit was filed in the district court of Tarrant county, Texas, by plaintiff in error against defendant in error on the 19th day of March, A. D. 1898, and was tried before that court without a jury on the 14th day of April, A. D. 1898, on which said trial plaintiff in error prevailed; whereupon defendant in error took an appeal, upon conclusions of fact and law as found by said trial court, to the court of civil appeals of the second supreme judicial district of Fort Worth, Texas, and the same was, after due hearing and submission, decided by said court on the 18th day of February, 1899, and so resulted that the judgment of said court was reversed and judgment rendered for defendant in error. Plaintiff in error filed his motion for a rehearing March 3, 1899, assigning errors therein as hereinafter in substance shown and by the record made manifest, and said motion was on the 25th day of March, 1899, overruled; that thereafter and within the time prescribed by law plaintiff presented his application for a writ of error to the supreme court of the State of Texas, complaining of the errors set forth in said assignment of errors filed herewith, but that said application, on the 25th day of May, A. D. 1899, was refused, and said supreme court of Texas refused to take jurisdiction of this cause, as shown by copy of its judgment filed among the papers in this cause.

Plaintiff shows that the decision of the honorable court of civil appeals of Texas was adverse to him, and that said decision
52 was the denial of a right claimed by him under the Constitution and laws of the United States, as shown by the following:

Statement of the Nature and Result of this Case.

The suit was one as for conversion of certain cattle of the alleged value of seven hundred dollars. Said cattle had been shipped from Plain Dealing, Louisiana, by plaintiff and five others to Fort Worth, Texas, and were delivered to defendant in error on or about the 28th day of August, 1897, by its connecting carrier, at Texarkana, Texas, and by it brought to Fort Worth the following day. Upon arrival of the cattle at Fort Worth all charges were duly tendered by said owners, but defendant refused to deliver said cattle

and returned the same to its initial point of shipment in Louisiana; and after tendering same to said owners there and said tender being refused, they sold said cattle for $299.20 and retained the proceeds. Thereafter and before said suit said five associate owners sold and assigned their respective interests in said cattle and the cause of action to plaintiff herein.

Defendant's only defense for its refusal to deliver said cattle was in substance that at the time of said shipment there existed an order (of which it was in ignorance, but of which the said owners had notice) of the Live Stock Sanitary Commission of Texas, duly made and promulgated by the governor of the State, whereby all cattle, horses, and mules were prohibited from being transported from the State of Louisiana into the State of Texas, from the 5th day of June, A. D. 1897, until the 15th day of November of said year, said order being based on a finding by said commission that it "has reason to believe that charbon or anthrax has or is liable to break out in the State of Louisiana." To this defense plaintiff interposed a reply by supplement- petition that said order was too general in its character; that it did not constitute a quarantine regulation or inspection law, in that its effect was to prohibit the importation of all live stock from the entire State of Louisi-
53 ana, whether diseased or capable of communicating the same or not, and was an undue restriction and burden upon commerce between said States, and for that reason in conflict with the powers of the General Government, as provided in section 8 of article 1 of the Constitution of the United States, and void.

Plaintiff's said reply being sustained by said trial court, but now overruled by said court of civil appeals, and plaintiff being denied all relief whatever, he complains thereof and says that the said errors, as set forth in his assignment of errors filed herewith, were committed to the prejudice of this plaintiff.

Wherefore plaintiff in error pray- that a writ of error may be allowed in this behalf to the court of civil appeals of the second supreme judicial district of Texas for the correction of the errors so complained of, and that the record, proceedings, and papers of this cause, duly authenticated, may be sent to the said Supreme Court of the United States.

WALLACE HENDRICKS,
Attorney for Plaintiff in Error, W. P. Smith.

ST. LOUIS & SOUTHWESTERN RAILWAY COMPANY OF TEXAS, Appellant,
vs.
W. P. SMITH, Appellee.

This the 4th day of August came the appellee, by his attorney, and filed herein and presented to the chief justice of this court his petition, and praying for the allowance of writ of error intended to be urged by him, praying also that the transcript of the record, proceedings, and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the

United States, at the seat of Government, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof the court does allow the writ
54 of error upon the appellee giving bond according to law in the sum of five hundred dollars, which may operate as a cost bond.

T. H. CONNER,
Chief Justice of the Court of Civil Appeals in and for the Second Supreme Judicial District of Texas.

I, W. L. Huff, clerk of the court of civil appeals of the second supreme judicial district, do hereby certify that T. H. Conner, whose name is subscribed to the foregoing order, was at the time of subscribing the same chief justice of the court of civil appeals of the second supreme judicial district of Texas, duly commissioned and qualified, and that full faith and credit are due to all his official acts as such.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Fort Worth, Texas, this the 24th day of August, A. D. 1899.

[L. S.] W. L. HUFF,
Clerk of the Court of Civil Appeals in and for the Second Supreme Judicial District of Texas, at Fort Worth, Tex.

Filed in court of civil appeals Aug. 24, 1899.
W. L. HUFF, *Clerk.*

Citation in Error.

The United States of America to the St. Louis & Southwestern Railway Company of Texas, J. F. Lehane, its agent, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, to be holden at the city of Washington, on the 9th day of October next, pursuant to a writ of error filed in the clerk's office of the court of civil appeals of the second supreme judicial district of Texas, wherein W. P. Smith is
55 plaintiff and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and speedy justice be done to the parties in that behalf.

Given under my hand, at the city of Fort Worth, second supreme judicial district of Texas, this 6th day of Sept., in the year of our Lord one thousand eight hundred and ninety-nine.

T. H. CONNER,
Chief Justice of the Court of Civil Appeals in and for the Second Supreme Judicial District of Texas.

We hereby, this the 8th day of September, A. D. 1899, accept due personal service of this citation on behalf of The St. Louis and

Southwestern Railway Company of Texas, defendant in error, reserving all rights available if regularly served.

PERKINS, GILBERT & HALL,
Attorneys for Defendant in Error.

Filed in court of civil appeals Sept. 6, 1899.

W. L. HUFF, *Clerk.*

Assignments of Error.

The Court of Civil Appeals, Second Supreme Judicial District of Texas, at Fort Worth.

W. P. SMITH, Plaintiff in Error,
vs.
ST. LOUIS & SOUTHWESTERN RAILWAY COMPANY OF TEXAS, Defendant in Error. } No. 3106.

Plaintiff in error, W. P. Smith, in connection with his petition for writ of error filed herewith, makes the following assign-
56 ment of errors, which he avers occurred in the judgment and determination of this cause by the honorable court of civil appeals:

First. The honorable court of civil appeals erred in sustaining appellant's first assignment of error and in holding that the alleged recommendation adopted by the Live Stock Sanitary Commission of the State of Texas, prohibiting the importation of all cattle, mules, and horses from the State of Louisiana into the State of Texas from the 5th day of June, 1897, until the 15th day of November of said year, and the proclamation of the governor of Texas, putting said recommendation in force, as set forth in said proclamation, as appears from a copy of the same and identified as "Exhibit A" in the record and set out in the court's opinion herein, was not a burden upon and an undue interference with commerce between the said State of Louisiana and the State of Texas and an invasion of the powers of Congress to regulate commerce between the said two States.

Second. The court erred in impliedly holding that the recommendation of the said Live Stock Sanitary Commission above mentioned was a quarantine measure within the police power of the State of Texas to adopt and enforce.

Third. The court erred in holding that said alleged quarantine regulation was authorized by the laws of the State of Texas.

Fourth. The court erred in not taking into consideration and in not finding that Congress, by the act of May 29th, 1884 (23 Stat. at L., 31, chap. 60), known as "The animal-industry act," together with the acts of March 3, 1891 (26 Stat. at L., 1044, 1049, chap. 544), and that of August 8, 1894 (session 2, chap. 238), also that of April 14, 1896 (chap. 140, p. 108), appropriating money to carry out the provisions of that act, covered substantially the whole subject of transportation from one State to another State — live stock liable to

impart or capable of communicating infectious or contagious
57 diseases, and in not holding that the State of Texas had no authority, without co-operating with the Secretary of Agriculture of the United States before attempting to adopt quarantine lines between the State of Louisiana and the State of Texas, for appellee says that by the act mentioned Congress had provided for a general system of quarantine and had adopted means for the regulation of shipments of cattle liable to impart or capable of communicating infectious or contagious diseases from one State to another.

Fifth. The court erred in the following conclusion: "Yet it nowhere appears from the record that before the quarantine line in question was established the sanitary commission did not make the most careful and thorough investigation into the necessity therefor, if, indeed, that matter could in any event be inquired into. So far as the record shows, every animal of the kind prohibited in the State of Louisiana may have been actually affected with charbon or anthrax, and it is conceded that this is a disease different from Texas or splenetic fever, and that it is contagious and infectious and of the most virulent character."

Said conclusion was not justified by the evidence in this cause for the reason that said recommendation of said sanitary commission shows upon its face that no investigation had been made, or, if any, only a partial one, for said commission does not find as a fact that the said disease of anthrax or charbon did actually exist in the State of Louisiana, but made said broad and sweeping prohibition under the guise of a quarantine regulation from a mere rumor that said disease "has or is liable to break out in the State of Louisiana."

Sixth. The court erred in its conclusion that inasmuch as said recommendation for the prohibition of the importation of cattle from Louisiana into the State of Texas was merely temporary in its character, that the same, for that reason, constituted it a quarantine measure.

58 Seventh. The court erred in its conclusion that it was the duty of appellee in the trial of this cause to show that said cattle, the value of which was sued for by him, were free from disease, and therefore not subject to the regulations complained of.

(*a.*) There was no contention that said cattle were diseased, nor any allegations to that effect *that* said appellant's answer in this cause.

(*b.*) Appellant, defendant in the court below, did not attempt to justify the conversation complained of by the reason of the diseased condition of said cattle, but relied for a defense wholly upon the broad powers under which said Live Stock Sanitary Commission of Texas assumed to act in laying an embargo upon the transportation of cattle from the State of Louisiana into the State of Texas during the period named in the proclamation of C. A. Culberson, governor.

WALLACE HENDRICKS,
Attorney for Plaintiff in Error, W. P. Smith.

Filed in court of civil appeals Aug. 28, 1899.

W. L. HUFF, *Clerk.*

Bond for Writ of Error.

The Supreme Court of the United States.

W. P. SMITH, Plaintiff in Error,
vs.
ST. LOUIS AND SOUTHWESTERN RAILWAY COMPANY OF TEXAS, Defendant in Error.

Know all men by these presents that we, W. P. Smith, as principal, and S. P. Clark and J. S. Collier, as sureties, are held and firmly bound unto the defendant, The St. Louis and South-
59 western Railway Company of Texas, in the full and just sum of five hundred and no $_{100}$ dollars, to be paid to the said defendant, The St. Louis and Southwestern Railway Co. of Texas, its attorneys, successors, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this the — day of October, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, at a term of the court of civil appeals of the second supreme judicial district of Texas, in a suit depending in said court between The St. Louis and Southwestern Railway Company of Texas, appellant, and W. P. Smith, appellee, a judgment was rendered against the said W. P. Smith, and the said W. P. Smith having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said St. Louis and Southwestern Railway Company of Texas, citing and admonishing it to be and appear at a session of the Supreme Court of the United States, to be holden at the city of Washington, District of Columbia, on the 9th day of October, A. D. 1899:

Now, the condition of the above obligation is such that if the said W. P. Smith shall prosecute his writ of error to effect and answer all damages and costs if he fail to make the said plea good, then the above obligation to be void; else to remain in full force and effect.

W. P. SMITH,
By WALLACE HENDRICKS,
His Agent and Attorney.
JAS. S. COLLIER.
W. P. SMITH.
S. P. CLARK.

The foregoing bond presented to me this the 12th day of October, A. D. 1899, and approved the same day.

T. H. CONNER,
Chief Justice of the Court of Civil Appeals of the 2nd Supreme Judicial District of Texas.

60 W. P. SMITH, Plaintiff in Error,
vs.
ST. LOUIS AND SOUTHWESTERN RAILWAY COMPANY OF TEXAS, Defendant in Error.

OCTOBER 12, 1899.

On this day came to be heard the application of W. P. Smith, plaintiff in error herein, to be allowed to substitute his writ of error bond heretofore filed and approved by me in this cause on the 6th day of September, A. D. 1899, and, it appearing that said bond has been lost or mislaid since the same was filed with clerk of the 2nd supreme judicial district of Texas, and cannot be found, it is ordered, therefore, that the bond this day approved by me, with J. S. Collier and S. P. Clark as sureties, be filed and allowed as a substitute for said original bond, as of the date of the original.

T. H. CONNER,
Chief Justice Court of Civil Appeals, 2nd Supreme Judicial District of Texas.

Filed in court of civil appeals Oct. 12, 1899.

W. L. HUFF, *Clerk.*

Bill of Costs.

ST. LOUIS — SOUTHWESTERN RAILway Company
vs.
W. P. SMITH, Appellee, } 3106. From Tarrant County.

Bill of costs.

Filing record	.50
Docketing cause	.50
Appearances	1.00
Filing and entering motion	.35
Orders	2.00
Filing papers	1.80
61 Judgment	1.00
Taxing costs	.50
Mandate, with certified copy of opinion attached	1.50
Recording opinion	8.00
Certified copy bill costs	.70
Certified copy of motion	2.00
Issuing notices	4.00
Issuing precept	1.50
Sheriff's fees	1.00
	26.35
Transcript of orders for application of writ of error to supreme court	1.00
Cost on application for writ of error in supreme court	7.00

Issuing execution	1.50
Transcript fee in lower court	14.00
Cost at Fort Worth	26.35
	$49.85
Transcript of record sent to Supreme Court of United States.	30.00
	$79.85

Clerk's Certificate.

I, W. L. Huff, clerk of the court of civil appeals for the second supreme judicial district of Texas, hereby certify that the foregoing is a true and correct transcript of all proceedings had in the trial court, in this court, and in the supreme court of Texas in the cause of W. P. Smith *v.* St. Louis Southwestern Railway Co. of Texas, as the same is contained in the records of this court.

Witness my signature and the seal of said court, at office, in the city of Fort Worth, this the 12th day of October, A. D. 1899.

Seal Court of Civil Appeals of the State of Texas.

W. L. HUFF, *Clerk.*

62 *Writ of Error to State Court.*

UNITED STATES OF AMERICA:

The President of the United States to the honorable the judges of the court of civil appeals of the second supreme judicial district of the State of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the court of civil appeals, second supreme judicial district of the State of Texas, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit, between W. P. Smith, appellee and plaintiff in error, and The St. Louis & Southwestern Railway Company of Texas, appellant and defendant in error, (1) wherein was drawn in question the validity of a treaty (or statute) of (or an authority exercised under) the United States and the decision was against their validity, or (2) wherein was drawn in question the validity of a statute of (or an authority exercised under) said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or (3) wherein was drawn in question the construction of a clause of the Constitution of (or of a treaty or statute of or commission held under) the United States and the decision was against the right, title, privilege, or exemption specially set up or claimed under such clause of the said Constitution (treaty, statute, or commission), a manifest error hath happened, to the great damage of the said W. P. Smith, appellee and plaintiff in error, as by his complaint appears, we, being willing that error, if any hath

been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United
63 States, together with this writ, so that you may have the same at Washington on the 9th day of October next, same being the second Monday in October, A. D. 1899, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct the error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 4th day of Sept., 1889, and the seal of the United States circuit court for the northern district of Texas, this September 4th, 1899, at Fort Worth, Texas.

{ The Seal of the U. S. Circuit Court, Northern Dist. Texas, Ft. Worth. }

J. H. FINKS,
Clerk U. S. Cire't Ct, Northern Dist. of Texas, at Ft. Worth,
By THOMAS P. MARTIN, *Deputy.*

Allowed by—

____ ____,
Chief Justice of the Court of Civil Appeals of the Second Supreme Judicial District of the State of Texas.

64 THE UNITED STATES OF AMERICA:

Court of Civil Appeals of the Second Supreme Judicial District of Texas.

In pursuance of the command of the writ of error within, I, W. L. Huff, clerk of the court of civil appeals of the second supreme judicial district of Texas, herewith transmit a true copy of the record, bill of exceptions, assignment of errors, and all proceedings in this case of The St. Louis & Southwestern Railway Company *vs.* W. P. Smith, lately pending in the court of civil appeals of the second supreme judicial district of Texas, under my hand and seal of said court.

Witness my official signature and the seal of said court of civil appeals, at the city of Fort Worth, in said district, this 12 day of Oct., in the year of our Lord one thousand eight hundred and 99, and of the Independence of the United States of America the one hundred and twenty-third.

[Seal Court of Civil Appeals of the State of Texas.]

W. L. HUFF,
Clerk of the Court of Civil Appeals of the Second Supreme Judicial District of Texas.

[Endorsed:] No. —. Writ of error. W. P. Smith, plaintiff in error, *vs.* St. Louis & Southwestern Railway Company of Texas, defendant in error. Filed in court of civil appeals Sep. 6, 1899. W. L. Huff, clerk 2nd supreme judicial district.

Endorsed on cover: File No., 17,563. Texas court of civil appeals, 2nd judicial district. Term No., 449. W. P. Smith, plaintiff in error, *vs.* The St. Louis & Southwestern Railway Company of Texas. Filed November 14th, 1899.